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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Second periodic reports of States parties due in 1998

Addendum

Gabon*

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* The information submitted by Gabon in accordance with the guidelines for the first part of the reports of States parties appears in the core document (HRI/CORE/1/Add.65/Rev.1). The annexes to the present report are available for consultation in the files of the secretariat.

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INTRODUCTION

1. This document is the second periodic report submitted by the Government of the Gabonese Republic under article 40, paragraph 1, of the International Covenant on Civil and Political Rights. It supplements and updates the initial report submitted on 16 November 1995 (CCPR/C/31/Add.4).

2. The report was drawn up in accordance with the Human Rights Committee's guidelines, which require States parties to submit reports on the measures which they have taken to give effect to the rights recognized in the Covenant and on the progress made in the enjoyment of those rights.

3. In this connection, it should be noted that major modifications have been made to the Gabonese Constitution. A new Constitution (Act No. 1/97 of 22 April 1997) has created the post of Vice-President of the Republic (art. 13) and a Senate (title III, art. 35).

4. The updated core document, which represents the first part of the reports by the States parties to the human rights instruments (HRI/CORE/1/Add.65/Rev.1 of 31 July 1998), contains a general presentation on Gabon and information on State structures and the organization of the executive, legislative and judicial powers.

INFORMATION CONCERNING ARTICLES 1 TO 27 OF THE COVENANT

Article 1: Right to self-determination

5. The preamble to the Constitution of 5 April 1997 states that the Gabonese people "solemnly affirms its commitment to human rights and fundamental freedoms" and "solemnly proclaims its commitment to its profound and traditional social values, to its cultural, material and spiritual heritage, and to respect for citizens' freedoms, rights and duties".

6. Since Gabon's accession to independence in 1960, the right of peoples to self-determination has been a constant in the positions it has taken at the international level and a recurring theme in its diplomacy.

7. This right is set forth by article 2 of the Constitution, which affirms that "Gabon is an indivisible, secular, democratic and social Republic", as well as by article 3, which states that "national sovereignty belongs to the people, which exercises it directly by referendum or by election, according to the principle of pluralist democracy".

Article 2: Right to non-discrimination

8. Gabon expresses the principle enunciated by article 2 of the Covenant in article 1, paragraph 13, of the Constitution, in the following terms: any citizen "has the right to form associations, political parties or groupings, trade unions, societies ..." (first subparagraph); "any act of racial, ethnic or religious discrimination and any regionalist propaganda which may be prejudicial to the internal or external security of the State or the integrity of the Republic shall be punishable by law" (second subparagraph).

Paragraph 11 of the same article states that "any Gabonese is entitled freely to establish his domicile or residence in any part of the national territory and to engage in all types of activity there".

Article 3: Equality of men and women

9. Equality of the sexes is enshrined in article 2 of the Constitution, which stipulates that "the Gabonese Republic assures the equality of all citizens before the law, without distinction as to origin, race, sex, opinion or religion".

10. Equality of the sexes is assured by providing women with opportunities similar to those of men in respect of access to education and vocational training for work, and participation in political life and the conduct of the country's public affairs. In practice, this is evidenced by the following:

(a) In the political domain, women have formed part of decision-making bodies since 1961;

(b) In the legal domain, women outnumber men in the judiciary (magistrates and clerks);

(c) In the health sector, in teaching and in the army, the number of female staff is growing rapidly.

Articles 4 and 5: Measures restricting or derogating from rights

11. Article 4 of the Covenant stipulates that in time of officially proclaimed public emergency, States parties may derogate from their obligations to the extent required by the situation. Gabon has provided for this situation in article 26, which reads:

> "When the institutions of the Republic, the independence or the higher interests of the nation, the integrity of its territory or the fulfilment of its international obligations are under serious and immediate threat and the regular functioning of the constitutional public powers is interrupted, the President of the Republic shall during the recess take by edict the measures required by the circumstances, after official consultation with the Prime Minister, the President of the National Assembly and the Constitutional Court."

12. During the state of emergency provided for under article 25 of the Constitution, individuals have effective guarantees and remedies in the form of police protection and recourse to tribunals. During this period, the National Assembly may not be dissolved, nor revision of the Constitution begun or completed (art. 26, para. 4).

13. Articles 6, 7, 8, 11, 15, 16 and 18 of the Covenant deal in particular with the right to life, with the right not to be tortured, enslaved or imprisoned for inability to carry out a contractual obligation, with equality before the law and with freedom of thought and conscience. These rights are enshrined in our Constitution and may not be derogated from even in an officially declared emergency.

Article 6: Respect for the human person

14. Respect for the human person is enshrined in article 1 of the Constitution, particularly in paragraph 1:

> "The Gabonese Republic recognizes and guarantees the inviolable and imprescriptible human rights, by which the public authorities are obligatorily bound.
>
> "1. Each citizen has the right freely to develop his personality while respecting the rights of others and public order. No one may be humiliated, mistreated or tortured, even while under arrest or in prison."

15. Concerning the death penalty, there has been no particular debate on this subject. However, death sentences have for some years now been commuted to life imprisonment. This tendency to refrain from execution bodes well for the future.

Article 7: Torture

16. The right to physical and moral integrity is guaranteed by the Gabonese Constitution (art. 1, para. 1). Pursuant to the Covenant, this provision states that "no one may be humiliated, mistreated or tortured, even while under arrest or in prison".

17. It must be remembered that in Gabon, which is a State subject to the rule of law, arrest - a measure that consists in apprehending an individual in the name of the law in order to bring him to justice - is an act which can be performed only by a legally authorized official and for acts covered and punishable by law.

Article 8: Slavery

18. The phenomenon of slavery is unknown in Gabon. However, since acceding to the various international instruments which deal with these matters, Gabon has developed appropriate legislation to prevent and punish any introduction of slavery-like practices. In accordance with article 4 of the Labour Code (Act No. 3/94 of 21 November 1994), forced or compulsory labour is forbidden.

Article 9: Liberty and security of person

19. The right to liberty and security of the human person is enshrined in the Gabonese Constitution. Accordingly, the Penal Code (Act No. 21/63 of 31 May 1963, updated in November 1994) characterizes infringement of this right as an abuse of authority if committed by a public servant, and as a serious offence if committed by a private individual.

Article 10: Conditions of detention

20. Article 1, paragraph 23, of the Constitution sets forth all the guarantees relating to detention. The prison population is under the supervision of the Ministry of the Interior. Police custody facilities are

designed according to standards established for the decent detention of persons in secure and healthy conditions. The legal time limits on police custody are respected.

Article 11: Imprisonment in civil cases

21. Civil proceedings do not lead to custodial sentences. However, where a court decision is not complied with, enforcement against the person may be ordered after all other possibilities have been exhausted.

Article 12: Freedom of movement

22. Article 1, paragraphs 3 and 11, of the Constitution grants all Gabonese citizens and any other person legally present in the country the right to freedom of movement. They may circulate freely in the national territory to the extent that no formalities are required in order to move from one place to another.

23. In 1990, the requirement of an exit visa for Gabonese citizens wishing to leave the country was abolished. They are free to travel to their destination of choice with their travel document (passport).

Article 13: Expulsion of aliens

24. Gabon is a party to the 1951 Geneva Convention relating to the Status of Refugees and its 1996 Protocol and to the 1969 Organization of African Unity Convention governing the Specific Aspects of Refugee Problems in Africa.

25. Foreigners (non-Gabonese citizens) and refugees who have met the conditions of entry and residence laid down by Gabonese immigration law may move around the national territory on the same terms as Gabonese citizens.

Article 14: Right to procedural guarantees

26. The right to procedural guarantees, established by this article of the Covenant, is a principle recognized by the Constitution and laws of Gabon. In this regard, it will suffice to recall the provisions of article 1, paragraph 13, which guarantees equality to all before the law, and article 67, which makes the judiciary the guardian of individual rights and freedoms.

27. Concerning access to the various courts, it should be noted that this is available to all persons residing in Gabon. The presumption of innocence is a sacred principle.

(a) Defendant's right to be informed of the charges against him

28. As stated in article 42, paragraph C, of the Code of Criminal Procedure (Act No. 35/61 of 5 June 1961), the examining magistrate is authorized to charge anyone who has committed, or been an accomplice to, the acts under investigation.

(b) Right to the assistance of an interpreter

29. When the defendant does not speak French, the official language of Gabon, he is guaranteed the right to the assistance of an interpreter (Code of Criminal Procedure, art. 58, para. B).

(c) Right to adequate time for the preparation of a defence

30. On the question of adequate time for the preparation of a defence, the law stipulates that a minimum of eight days must elapse between the defendant's first appearance before the examining magistrate and his second appearance, which comprises an examination of the merits.

(d) Right to be tried within a reasonable time

31. When apprehended in flagrante delicto or taken into custody by direct summons, the defendant must normally appear at the next scheduled hearing.

(e) Defendant's right to be tried in his presence and to defend himself

32. The defendant must be physically present in all cases except civil cases where his presence is not indispensable.

(f) Defendant's right to examine or subpoena the witnesses of his choice

33. This right is a corollary to the right to a defence. Under article 55 of the Code of Criminal Procedure, the judge must summon all persons whose testimony appears likely to help elicit the truth. Witnesses may also testify voluntarily.

(g) Defendant's right not to be compelled to testify against himself

34. This flows from the defendant's right not to be forced to confess guilt.

(h) Right of juvenile defendants to receive special treatment

35. This right is recognized and guaranteed under Gabonese law. The justification for this policy is that an easily influenced minor must be given a chance to reform and, if possible, must not be subjected to imprisonment, during which contact with hardened criminals may influence his social behaviour. Articles 143-147 of the Code of Criminal Procedure establish the procedure to be applied to delinquent or morally endangered minors.

(i) Right to monetary compensation in cases of arbitrary or illegal detention

36. This situation is covered by Act No. 10/83 of 31 December 1983. A decree governs the procedure for indemnification in cases where detention has resulted in damage that is clearly abnormal and of particular seriousness.

(j) Right not to be tried or punished after being acquitted or discharged of a criminal offence

37. Gabonese law implicitly recognizes the general legal principle of res judicata.

Article 15: Legality of criminal offences and penalties

38. An offence is defined as an individual's act, or failure to act, which is covered and punished by a law. Gabonese criminal law respects the legal principle expressed in the Latin adage Nullum crimen, nulla poena sine lege, according to which any act which constitutes a serious, ordinary or minor offence, together with the applicable penalties, must be defined.

Articles 16 to 19: Rights to recognition as a person before the law, to privacy, to freedom of thought, and to freedom of opinion and expression

39. The preamble to the Gabonese Constitution guarantees the following rights to all persons, irrespective of race, origin, political opinions, colour, religion or sex, in article 1 of its preliminary Title, "Fundamental Principles and Rights": right to freedom of development (para. 1); right to freedom of conscience, thought, opinion and expression (para. 2); right to inviolable confidentiality of correspondence (para. 5); right to inviolability of the home (para. 12); and right to freedom of association and political adherence (para. 13).

40. The right to privacy is guaranteed by the Constitution, as is freedom of expression. Since 1990, a number of radio and television stations and newspapers have been functioning freely. A body guaranteeing their freedom of action, the National Council of Communication (CNC), has been established.

Article 20

41. The maintenance of peace within the country, and in the world, is the basis of all of Gabon's national and international policies. At the national level, this commitment is expressed, above all, in the Constitution, article 49 of which states that only the National Assembly may declare war.

Articles 21 and 22: Freedom of assembly and association

42. These rights are recognized under article 1, paragraph 13, of the Gabonese Constitution, which accepts freedom of association as a principle.

43. Chapter IV of the Penal Code (Act No. 21/63 of 31 May 1963), concerning breaches of the peace and threats to public safety or the authority of the State (arts. 79-97), lists potential offences and penalties relating to association, since the Constitution itself stipulates that no restrictions may be placed on the right to form associations other than those mandated by law.

44. With regard to the right to organize, article 1 (para. 13, subpara. 1) of the Constitution defines the right of every individual to establish a labour union. Title VI, chapter I, section I, of the Labour Code (Act No. 3/44 of 21 November 1994) defines the substantive and procedural conditions for the establishment of labour unions.

Article 23: Family rights

45. Protection of the family and marriage is embodied in article 1, paragraph 14, of the Constitution. Under-age and/or forced marriages are forbidden by law.

46. In order to remedy discriminatory consequences for women in marriage, a number of measures have been taken, notably: (a) Offering foreign women married to Gabonese citizens the opportunity to choose their nationality; (b) preserving the Gabonese nationality of women who marry foreigners; (c) recognizing the parental authority of both the father and the mother; and (d) asserting women's inheritance rights.

Article 24: Rights of the child

47. Gabon has ratified the 1989 Convention on the Rights of the Child. Thus, the child has a fundamental place in Gabonese law. Under the Constitution, the State is required to protect young people from moral and social danger, and the family is required to raise them. Article 1, paragraphs 16-19, of the Constitution deals with tne health and education of children.

Article 25: Rights to take part in the conduct of public affairs, to vote and be elected, and to have access to public service

48. In article 1 of the Constitution's preliminary Title, "Fundamental rights and principles", several provisions are devoted to the guarantee and protection of these rights.

Article 26: Equality of all before the law

49. The equality of all citizens before the law is enshrined in article 1, paragraph 13, subparagraph 3, of the Constitution.

Article 27: Minorities

50. There is no problem of minorities in Gabon, the population being fully integrated socially.

CONCLUSION

51. This second periodic report reflects Gabon's desire to honour its international commitments. New institutions have now been set up, notably the Vice-Presidency of the Republic and the Senate.

52. Gabon has moreover attempted in this report to take account of the observations made by the Committee during the consideration of the initial report. Certain specific measures have been taken: in particular, the police forces have been placed back under the supervision of the Ministry of the Interior; specific new steps have been taken for the protection of women; and a Directorate-General on Human Rights has been set up.